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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,129	04/01/2004	Jerome Tomlin	TOMLIN-2	9623
545	7590	01/25/2006	EXAMINER	
ROGER PITT KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP 599 LEXINGTON AVENUE 33RD FLOOR NEW YORK, NY 10022-6030			MATHEW, FENN C	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/816,129	Applicant(s) TOMLIN, JEROME	
	Examiner Fenn C. Mathew	Art Unit 3764	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). **ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION.** See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 2 and 5-13.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.



MICHAEL A. BROWN
PRIMARY EXAMINER

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 2 and 5-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Netti (U.S. 4,330,120) and further in view of Jackson, Jr. 3,759,510). Applicant has combined the limitations of previously rejected claims 1 and 3-4 with previously rejected claim 8. Applicant has also combined the limitations of previously rejected claim 14 with claim 13. The rejections have been explained in the office action dated 09/20/05. In summary, Netti teaches an unweighted glove section, a forearm section comprising one or more pliable members. With respect to claims 2, 5-6, as previously discussed Netti discloses the forearm section having pockets (30) that hold and receive the weights. Netti also discloses the fastening member comprising straps (37), and a zipper (15). With respect to claims 8-10, Netti teaches a plurality of securement straps (37) extending around the weight. Furthermore, Netti teaches the forearm weights lying between the glove section and one of the securement straps. With respect to claim 11, the specific length chosen for the forearm section is considered a matter of obvious design choice, absent criticality or unexpected results. Furthermore, length is relative to the specific user, depending on the relative lengths of two individuals' arms. A glove fitted for a short-limbed person would not encompass the entire forearm of a user with much longer limbs. With respect to claim 12, Netti teaches fastening members comprising adjustable straps (37). Netti fails to teach the specific material and underlying properties of the weights used. Jackson, Jr. teaches in an exercise garment

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including weighted gloves, that it is desirable to have the weights comprise sand and metal pellets in order to allow for more flexibility and movement (column 3, lines 1-28). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to have the weights of Netti consist of a mixture of sand and metal pellets as taught by Jackson, Jr. in order to allow for increased flexibility and uninhibited movement. With reference to claim 7, Netti teaches the claimed device except for closed-ended finger receiving members. In view of the notoriously old teachings of providing closed-ended finger loops in weighted gloves, as evidenced by Jackson, Jr., it would have been obvious to provide closed-ended finger receiving members in order to protect the fingertips.

Response to Arguments

3. Applicant's arguments filed 12/27/05 have been fully considered but they are not persuasive. Applicant has argued that Netti (U.S. 4,330,120) fails to teach a glove that supports weight about the wrists. This argument is not considered persuasive, as Examiner points out the limitation in question recites 'said weight is flexible and is able to conform generally to the shape and dimensions of the wearer's wrist or forearms'. The limitation requires it to conform to the wrist OR the forearm. In the instant case, Netti conforms to the user's forearms. The preamble phrase 'for conditioning arms and upper body muscles' fails to impart patentably distinct limitation, as Netti has recited the claimed structural limitations, and is capable of performing the intended function.

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Applicant's arguments are drawn to limitations not encompassed by the claims.

Applicant is reminded that claims are read in their broadest reasonable light.